ATTACHMENT I

Extended Benefits
Questions and Answers

IN GENERAL

CH 1-1. Question: Section 2005(c) of Public Law No. 111-5 includes a six-month phase-out of the temporary 100-percent Federal financing for Extended Benefits (EB) that the Public Law establishes. For individuals who received EB for a week of unemployment beginning before Friday, January 1, 2010, EB payments made for weeks ending before June 1, 2010, will continue to be eligible for 100-percent Federal financing. However, payments to individuals who first received EB for weeks of unemployment beginning after January 1, 2010, would be funded through a 50-percent Federal share and a 50-percent state share. After January 1, 2010, can a state limit EB to only those individuals who were covered by full Federal funding?

Answer: No. If the state is in an EB period, it must pay all individuals who qualify for EB, regardless of Federal sharing. Conversely, if a state is not in an EB period, it may not pay any EB.

CH 1-2. Question: My state is in the process of adding the Total Unemployment Rate (TUR) trigger to its law. May my state law provide that the EB period will begin prior to the date of enactment?

Answer: Assuming that the requirements for an EB period are met, nothing in Federal law or regulation prohibits the retroactive EB period described in the question.

CH 1-3. Question: To follow-up on the preceding question, how will eligibility for any retroactive weeks be determined, particularly with respect to backdating claims and to the EB program's requirement that an individual engage in a "systematic and sustained" search for work?

Answer: For purposes of backdating claims, state law applies. See 20 CFR 615.8(a)(1). The EB work search requirements do not apply to retroactive weeks. The EB work search requirements only apply after individuals are notified in writing that their prospects of finding employment are "not good". See Q&A CH 1-7.

CH 1-4. Question: Q&A 5 in UIPL No. 12-09 states that the changes made by Public Law No. 111-5 do not affect Federal sharing for EB based on service performed in the employ of state and local governments and federally-recognized Indian tribes. How should the state charge EB based on service for these entities?

Answer: The answer differs for reimbursing employers and contributing employers:

- Because section 204(a)(3) of the EB law denies Federal reimbursement for EB based on service for state and local governments and federally-recognized Indian tribes, 20 CFR 615.10(b) requires these employers, when they elect the reimbursement option, to reimburse 100 percent of these EB costs. Public Law No. 111-5 does not change this result because it does not change the fact that there is no Federal reimbursement for these costs.

- State law dictates whether or not contributory employers are charged for EB. (However, states must continue to charge contributing employers for their share of sharable regular compensation.) See 20 CFR 615.10(a).

EB WORK SEARCH REQUIREMENTS

CH 1-5. Question: Where can I find more information on the EB work search requirements?

Answer: Regulations governing the EB work search requirements, and other matters related to the EB program, are available at 20 CFR Part 615. The core provisions are summarized in Q&As CH 1-6 through CH 1-14.

CH 1-6. Question: When must individuals begin the EB work search?

Answer: Individuals must begin a work search after the state provides notification that their prospects for obtaining work within a reasonably short period of time are "good" or "not good." The state must provide this notification no later than the end of the week in which individuals file their first EB claim. Individuals whose job prospects are "not good" must be notified of the EB work search requirements at the same time. The work search requirements apply to the week following the week in which the individual receives such notice. See 20 CFR 615.8(d)(1).

CH 1-7. Question: How does the state determine whether an individual's prospects for obtaining work within a reasonably short period of time are "good" or "not good"?

Answer: State law specifies what constitutes a reasonably short period of time. See 20 CFR 615.2(o)(3). Since individuals claiming EB have exhausted regular compensation and Emergency Unemployment Compensation (EUC08), they have been unemployed for a long time. There is a presumption that their prospects of obtaining work within a reasonably short period of time generally will be considered "not good." Individuals can rebut this presumption by furnishing to the state satisfactory evidence to the contrary.

CH 1-8. Question: What are the work search requirements for an individual who is claiming EB?

Answer: The answer depends on whether the individual's prospects for obtaining work within a reasonable time are "good" or "not good." Individuals whose prospects are "good" must conduct the same search for suitable work as is required of individuals claiming regular compensation under state law. Many state laws allow such individuals to establish eligibility if they limit their work search to their usual occupation. In other words, many state laws do not require individuals to immediately search for any kind of work available.

The EB law and regulations set forth the work search requirements that states must require for individuals whose work prospects are "not good." Taken together, this authority requires a "systematic and sustained effort" to search for "suitable work" for each week of EB claimed. (See Sections 202(a)(3)(C) - (E) of the EB law and 20 CFR 615.8(d)(4), and 615.2(o)(8).) A "systematic and sustained effort" means, among other things, that the search is "not limited to the classes of work or rates of pay to which the individual is accustomed or which represent the individual's higher skills, and which includes all types of work within the individual's physical and mental capabilities . . . ." 20 CFR 615.2(o)(8)(iv).

CH 1-9. Question: How do the work search requirements relate to individuals participating in a short-time compensation (STC) program?

Answer: The job prospects for individuals participating in a STC program are considered "good" because they are working, although at reduced hours. Moreover, Section 401(d)(1) of Public Law No. 102-318 defines STC as a program under which, among other things, "eligible employees are not required to meet . . . work search requirements while collecting" STC. Thus, individuals are not required to seek work as a condition of receiving STC, regardless of whether the individual is claiming regular compensation or EB.

SUBMISSION OF TANGIBLE EVIDENCE

CH 1-10. Question: What tangible evidence of seeking work must the individual submit?

Answer: The individual must supply information which includes the (1) actions taken, (2) methods of applying for work, (3) type(s) of work sought, (4) dates and places where work was sought, (5) name of the employer or person contacted, and (6) outcome of the contact. See 20 CFR 615.2(o)(9).

CH 1-11. Question: Must the individual actually submit the tangible evidence of work search to the state prior to the state issuing payment? Alternatively, may states issue payment based on the individual's certification, via Interactive Voice Response (IVR) or other means, that the tangible evidence has been transmitted to the state?

Answer: It is preferable that a state require an individual to submit the tangible evidence with each claim. However, the Department of Labor (Department) will permit states to make

payment based on the individual's certification that s/he has conducted the required work search and transmitted the evidence to the state.

Section 615.8(g)(1) of 20 CFR requires the submission of tangible evidence of actively seeking work "with each claim," suggesting that the state must receive the evidence at the same time as other claims materials. However, that section was drafted when simultaneous submittal of work-search data was more practical since claims were filed either in–person or through the mail. The current use of technologies such as IVR generally allows the states to process claims quickly and efficiently, but does not readily permit a claimant to submit "tangible evidence," that is, "a written record" (20 CFR 615.2(o)(9)), "with each claim." Accordingly, the Department interprets section 615.8(g) as permitting a state to make payment upon the individual certifying, "with each claim," that s/he has conducted the required work search and is submitting the tangible evidence. At a minimum, a state must periodically audit reasonable samples of the tangible evidence submitted to ensure that it has received these "written records" and that they are complete.

CH 1-12. Question: Must the state review the tangible evidence before making each payment?

Answer: No. It is not practical for states to review all tangible evidence before making payments. However, states must, at a minimum, periodically review for completeness a reasonable sample of such evidence after payment.

CH 1-13. Question: How may the tangible evidence of an active search be submitted?

Answer: No single method of submission is required. What is essential is that the individual provide the necessary information in a verifiable form. As a result, states may require submission through paper, on-line, IVR, fax, or any other method that assures the state obtains the information. (For audit purposes, the state is required to maintain the individuals' responses for the same length of time as any written record(s). See 20 CFR 615.15(b).)

SUSPENSION OF WORK SEARCH REQUIREMENTS

CH 1-14. Question: May a state suspend the EB work search requirement?

Answer: The work search requirements for individuals whose job prospects are "not good" may be suspended when:

- "[S]evere weather conditions or other calamity forces suspension of such activities by most members of the community." (See 20 CFR 615.2(o)(8)(vi).) High unemployment is not a "calamity" which "forces" suspension of work search.

- Individuals are on jury duty or "[h]ospitalized for treatment of an emergency or life-threatening condition." However, such suspension criteria only apply when state law

authorizes suspension for both EB and regular UC. (See 20 CFR 615.8(g)(3).) Any illnesses or disabilities not requiring hospitalization for the reasons described are not permissible reasons to suspend the EB work search requirements.

In addition, "State law applies regarding whether members of labor organizations shall be required to seek nonunion work in their customary occupations." See 20 CFR 615.8(g)(4).

INTERSTATE CLAIMS

CH 1-15. Question: Federal law limits EB eligibility to two weeks for certain individuals who file from a state that is not in an EB period. Does this limitation pertain to commuter claims?

Answer: No. The two-week limitation applies only to claims filed under the Interstate Benefit Payment Plan (IBPP). Commuter claims are made by individuals who regularly traveled across a state line from home to work, and file for UC with the state of employment. Because commuter claims are not filed through the IBPP, the two-week limitation does not apply. See EB law, Section 202(c) and 20 CFR 615.9(c).

TERMINATING DISQUALIFICATIONS USING WORK

CH 1-16. Question: My state law provides that individuals are not required to return to work to terminate certain disqualifications. Instead, they must only wait a certain number of weeks to qualify. To be eligible for EB, an individual must terminate a disqualification using employment. How, in practice, does this work?

Answer: The Department's regulations provide that, for EB purposes, a state "shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated." (20 CFR 615.8(c)(2).) Under this rule, when the individual first files for EB, the state will apply the EB provisions of its UC law which require employment to terminate a disqualification. If the state finds that the individual has performed the employment required by its law prior to filing for EB, the disqualification will be terminated and initial EB eligibility may be established. If the state finds that such employment has not been performed, the state will issue an appealable determination specifying the amount of employment required for EB eligibility.

ENTITLEMENT DURING HIGH UNEMPLOYMENT PERIODS

CH 1-17. Question: My state has triggered "off" the 8 percent high unemployment period (HUP) provided for under the TUR trigger. It remains triggered "on" under the 6.5 percent TUR trigger. How does my state treat individuals with remaining HUP entitlement?

Answer: In general, when a state triggers "on" to a HUP, an individual's maximum entitlement to EB will equal up to 20 weeks of benefits, as opposed to up to 13 weeks of benefits for "basic" EB. These additional weeks of benefits are payable only for weeks of unemployment occurring in a HUP. As a result, when a state triggers "on" a HUP, the state will redetermine amounts payable for an otherwise eligible individual. However, when a state triggers "off" a HUP and the individual has not exhausted all entitlement, the state must redetermine the individual's remaining entitlement.

Specifically, when a HUP triggers "off," the state must redetermine entitlement based upon the "basic" EB monetary determination, minus benefits paid. For example, if an individual first becomes EB-eligible during a HUP, the individual will initially be entitled to 20 weeks. If the individual is paid six weeks and the HUP ends, the individual's remaining entitlement will be recalculated based on the current 13-week maximum entitlement minus any weeks of EB paid. In this case, the individual's remaining entitlement would equal seven weeks. (13 – 6 = 7.)

As another example, assume the above individual was paid 15 weeks of EB and the HUP ends. In this case, the individual would have no remaining entitlement because the individual's current entitlement is capped at 13 weeks and an amount exceeding 13 weeks has already been paid.

BEGINNING AND ENDING DATES OF EB PERIODS

CH 1-18. Question: When does my state's EB period begin and end if it triggers "on" and "off" under different triggers? For example, my state:

- Triggers "on" EB under the TUR trigger.
- While still meeting the TUR trigger, also meets the mandatory insured unemployment rate (IUR) "on" trigger.
- While still meeting the IUR trigger, stops meeting the TUR trigger.
- Finally, stops meeting the IUR trigger.

Answer: The state's EB period will begin with the first week payable under the TUR trigger and end with the last week payable under the IUR trigger. In this case, although there are different triggers for determining when an EB period may begin and end, there is only one EB period. As long as EB remains triggered "on" throughout this period under any trigger, the EB period continues. (See UIPL No. 45-92.)

The answer would be different if the "on" triggers do not overlap. For example, if the last week payable under the TUR trigger is week 14 of the calendar year and the first week payable under the IUR trigger is week 15, then the EB period would not be continuous. Instead, the TUR EB period would end. In this case, even though the state is continuing to experience high unemployment, the state must trigger "off" EB for a minimum of 13 weeks as required by EB law, Section 203(b)(1)(B), and 20 CFR 625.11(d).

CH 1-19. Question: An EB period based on the TUR trigger begins the third week following the Department's EB trigger notice identifying that the state meets the "on" indicator. For the IUR trigger, the EB period begins the week immediately following the release of the trigger notice with an "on" notice. What is the reason for this difference?

Answer: Under Federal law, an EB period based on either the IUR or the TUR trigger begins the "third week after the first week for which there is a State 'on' indicator." (EB law, Section 203(a)(1).) However, since the "on" indicators for the IUR and TUR triggers are based upon different events, the EB periods they trigger begin at different times following the trigger notices:

- Under the IUR trigger, the week of the "on" indicator is the last week of a 13-week period when the state's IUR reaches the levels specified in law and regulation. (See Section 203(d)(1) of the EB law and 20 CFR 615.12(a).) Under Section 203(a)(1) of the EB law, the EB period begins the third week after this "on" indicator week. The week that the EB period begins is the week after the trigger notice is published because the process proceeds as follows:

    - Week 1 is the week when individuals submit benefit claims for the prior week. That prior week will be deemed the "on" indicator week if these benefit claims meet the IUR trigger requirements
    - Week 2 is the week the state compiles the benefit claims submitted during Week 1, the state reports its IUR to the Department, and the Department issues the EB trigger notice based on the state report
    - Week 3 is the beginning of the EB period.

- Under the TUR trigger, the week of the "on" indicator is the week "the average rate of total unemployment in [a] State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published" meets certain criteria. (EB law, Section 203(f)(1)(A)(i).) Thus, the statute ties the TUR "on" indicator to the week of publication, and the EB period begins the third week following this indicator week. As a result, for example, when data for the month of February for all states was published on March 27, 2009, the EB period for states triggering "on" using this data began April 12, 2009.

Similarly, the end dates of EB periods in relation to the Department's EB trigger notice depend on whether the state triggers "off" an EB period based on the TUR trigger or the IUR trigger.